

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

RUDY PHIL JAQUEZ,)
)
Petitioner,)
)
v.) CIV-13-204-M
)
STATE OF OKLAHOMA,)
)
)
Respondent.)

REPORT AND RECOMMENDATION

Petitioner, a former detainee appearing pro se, filed this action seeking habeas relief pursuant to 28 U.S.C. §2254. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). On February 27, 2013, the undersigned reviewed the pleadings filed by Petitioner and entered an Order notifying Petitioner that the documents filed on February 26, 2013, were deficient because (1) the motion to proceed *in forma pauperis* was not submitted and/or the \$5 filing fee had not been paid and (2) the Petition was not on the proper form.¹ Petitioner was directed to cure these deficiencies on or before March 19, 2013. The Petitioner was further cautioned that the

¹Petitioner's handwritten Petition indicated he was being detained at the Oklahoma County Detention Center, after having been arrested on February 24, 2013 "on an assault charge." He requested to have the charge "dismissed."

undersigned would recommend that the action be dismissed without prejudice if the Petitioner failed to comply. On March 1, 2013, the Court Clerk's correspondence directed to Petitioner at his last known address was returned to the Clerk as undeliverable with the remark "released 2/26/2013." As of this date, Petitioner has failed to cure the deficiencies by either (1) submitting an application to proceed *in forma pauperis* that complies with 28 U.S.C. §1915 and Local Civil Rule 3.3 or paying the \$5.00 filing fee or (2) submitting the Petition on the proper form.

Petitioner's lack of interest in complying with the Court's Order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the action without prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*), cert. denied, 450 U.S. 984 (1981).

RECOMMENDATION

In view of the foregoing, the undersigned recommends that the Petition be dismissed without prejudice. The Petitioner is advised of his right to file an objection to the Report and Recommendation with the Clerk of this Court by April 9th, 2013, in accordance with 28 U.S.C. §636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)(“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 20th day of March, 2013.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE

The image shows a handwritten signature "Gary M. Purcell" in cursive script above the printed name "GARY M. PURCELL" and the title "UNITED STATES MAGISTRATE JUDGE".